

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

841 CHESTNUT BUILDING 93 FEB -9 AM 6:33
PHILADELPHIA, PENNSYLVANIA 19107

In Re:) Docket No. RCRA-III-224
Potomac Electric Power Company) First Amended Complaint,
1900 Pennsylvania Avenue, N.W.) Compliance Order and Notice of
Washington, DC 20068) Opportunity for Hearing
RESPONDENT)

I. INTRODUCTION

This First Amended Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") is filed pursuant to Sections 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The Complainant is the Associate Division Director for RCRA Programs, Hazardous Waste Management Division, United States Environmental Protection Agency, Region III ("EPA"). Respondent is Potomac Electric Power Company with facilities located in Washington, District of Columbia; Alexandria, Virginia; and Newburg and Aquasco, Maryland ("Respondent").

Respondent is hereby notified of EPA's determination that it has violated the District of Columbia Hazardous Waste Management Regulations ("DCMR"), the Virginia Hazardous Waste Management Regulations ("VHWMR"), the Code of Maryland Annotated Regulations ("COMAR"), Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939b, and the regulations thereunder, 40 C.F.R. Parts 260-270.

On March 22, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the District of Columbia was granted final authorization to administer a state hazardous waste management program in lieu of the Federal hazardous waste management program established under Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939b. The provisions of the District of Columbia hazardous waste management program, through this final authorization, have become requirements of Subtitle C of RCRA and are, accordingly, enforceable by EPA pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g). The District of Columbia's authorized hazardous waste management program regulations are set forth in the DCMR and will be cited as "20 DCMR" followed by the applicable section of the regulations.

On December 18, 1984, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the Commonwealth of Virginia ("Virginia") was granted final authorization to administer a state hazardous waste management program in lieu of the Federal hazardous waste management program established under Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939b. The provisions of the Virginia hazardous waste management program, through this final authorization, have become requirements of Subtitle C of RCRA and are, accordingly, enforceable by EPA pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g). Virginia's authorized hazardous waste management program regulations are set forth in the VHWMR.

On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland ("Maryland") was granted final authorization to administer a state hazardous waste management program in lieu of the Federal hazardous waste management program established under Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939b. The provisions of the Maryland hazardous waste management program, through this final authorization, have become requirements of Subtitle C of RCRA and are, accordingly, enforceable by EPA pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g). Maryland's authorized hazardous waste management program regulations are set forth in the COMAR, Title 10.51. These regulations have been recodified at COMAR, Title 26.13. Because such recodification has not been authorized by EPA, citations in this Amended Complaint are to COMAR, Title 10.51.

Neither the District of Columbia, Virginia nor Maryland has been granted authorization to administer its hazardous waste management program in lieu of certain provisions of the Hazardous and Solid Waste Amendments ("HSWA") enacted on November 8, 1984 (Pub. L. No. 98-616), which amended Subtitle C of RCRA. These provisions are enforceable in the District of Columbia, Virginia and Maryland exclusively by EPA.

To the extent that factual allegations or legal conclusions set forth in this First Amended Complaint are based on provisions of the District of Columbia's, Virginia's or Maryland's authorized hazardous waste management program regulations, those provisions are cited as authority for such allegations or conclusions. Any analogous provisions of the Federal hazardous waste management program under Subtitle C of RCRA are cited thereafter for convenience. Factual allegations or legal conclusions based solely on provisions of the Federal hazardous waste management program added or amended by HSWA cite those federal provisions as authority for such allegations or conclusions.

EPA has given the District of Columbia, Virginia and Maryland prior notice of the issuance of this First Amended

Complaint in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

II. FIRST AMENDED COMPLAINT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is chartered under the laws of the District of Columbia and is also a corporation doing business in the District of Columbia, Virginia and Maryland and is a "person" as defined in 20 DCMR § 4000.1(a), VHWMR § 2.134 and COMAR § 10.51.03B(51) (40 C.F.R. § 260.10).

2. Respondent owns and operates businesses located at 3300 Benning Road, N.E., Washington, District of Columbia 20019 ("Benning Road Facility"); 1400 North Royal Street, Alexandria, Virginia 22314 ("Potomac River Facility"); Route 301 and Potomac River, Newburg, Maryland 20805 ("Morgantown Facility") and Chalk Point (Eagle Harbor Road), Aquasco, Maryland 20753 ("Chalk Point Facility"). These facilities are electric power plants that generate steam by burning fossil fuel to produce electricity to serve the Washington Metropolitan area.

3. On August 18, 1980, Respondent submitted to EPA a Notification of Hazardous Waste Activity ("Notification") for the Benning Road Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a generator and the Benning Road Facility as a treatment, storage and disposal facility of hazardous waste bearing the following EPA hazardous waste numbers: F001, U210 and U188. Each of these wastes is a "hazardous waste" as that term is defined in 20 DCMR § 4000.1(a) (40 C.F.R. §§ 260.10, 261.31 and 261.33).

4. On November 19, 1980, Respondent submitted to EPA a Part A permit application ("Part A") for the Benning Road Facility, pursuant to 20 DMCR §§ 4000.1 (b) and 4007.2 (d)-(h) (40 C.F.R. Part 270). Respondent stated in this Part A that it generated F001, U188, U210 wastes and hazardous waste bearing the EPA hazardous waste number D002. The process code information submitted in this Part A indicated that Respondent stored F001, U188, U210 wastes and hazardous waste bearing the EPA hazardous waste number D002 in tanks; treated F001, U188 and U210 wastes by incineration; and treated hazardous waste in tanks bearing the EPA hazardous waste number D002. Each of these wastes is a "hazardous waste" as that term is defined in 20 DCMR § 4000.1(a) (40 C.F.R. § 260.10, 261.31 and 261.33).

5. On January 14, 1981, EPA acknowledged the Notification referred to in Paragraph 3 above and assigned the Benning Road Facility the EPA identification number DCD 000 819 516.

6. In a November 10, 1983 letter, EPA requested that Respondent submit to EPA, Respondent's Part B permit application ("Part B") for the Benning Road Facility.
7. In a January 17, 1984 letter, the Department of Consumer and Regulatory Affairs ("DCRA") requested that the Respondent submit to DCRA, Respondent's Part B for the Benning Road Facility.
8. In an April 4, 1984 letter to DCRA, Respondent requested the withdrawal of its Part A for the Benning Road Facility.
9. In a September 27, 1984 letter to Respondent, DCRA accepted Respondent's April 4, 1984 letter of withdrawal, referenced in Paragraph 8 above, and terminated Respondent's interim status for the Benning Road Facility.
10. On January 24, 1986, Respondent submitted to EPA a revised Notification for the Benning Road Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a burner of hazardous waste fuel in a utility boiler and a generator of hazardous waste bearing the EPA hazardous waste number F001.
11. Respondent does not have a permit or interim status under 20 DCMR § 4007.2(d)-(h) (Section 3005 of RCRA or 40 C.F.R. Part 270) to treat, store or dispose of hazardous waste at the Benning Road Facility.
12. With respect to the Benning Road Facility, Respondent is a "generator" as that term is defined in 20 DCMR § 4000.1(a) (40 C.F.R. § 260.10).
13. On August 18, 1980, Respondent submitted to EPA a Notification for the Potomac River Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a generator and the Potomac River Facility as a treatment, storage or disposal facility of hazardous waste bearing the following EPA hazardous waste numbers: F001, U133, U210, U220 and U226. Each of these wastes is a "hazardous waste" as that term is defined in VHWMR § 2.80 and Appendix 3.1 of § 3.00 of VHWMR (40 C.F.R. §§ 260.10, 261.31 and 261.33).
14. On November 19, 1980, Respondent submitted to EPA a Part A for the Potomac River Facility. Respondent stated in this Part A that it generated F001, U133, U210, U220, U226 wastes and hazardous waste bearing the EPA hazardous waste number D002. The process code information submitted in this Part A indicated that the Respondent stored F001, U133, U210, U220, U226 wastes and hazardous waste bearing the EPA hazardous waste number D002 in tanks; treated F001, U133, U210, U220 and U226 wastes by

incineration; and treated hazardous waste in tanks bearing the EPA hazardous waste number D002.

15. On January 14, 1981, EPA acknowledged the Notification referred to in Paragraph 13 above and assigned the Potomac River Facility the EPA identification number VAD 000 731 588.

16. In a September 15, 1983 letter, the Virginia Department of Waste Management ("VDWM") requested that Respondent submit to VDWM Respondent's Part B for the Potomac River Facility.

17. On July 10, 1984, VDWM terminated Respondent's interim status for its Potomac River Facility, pursuant to VHWMR § 11.00 (40 C.F.R. Part 270), based on an April 4, 1984 letter request submitted by Respondent to VDWM. In the April 4, 1984 letter, Respondent indicated that it would not submit a Part B for the Potomac River Facility. In that letter, Respondent stated that hazardous waste was not stored or treated at the Potomac River Facility.

18. On January 24, 1986, Respondent submitted to EPA a revised Notification for the Potomac River Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a burner of hazardous waste fuel in a utility boiler and a generator of hazardous waste bearing the EPA hazardous waste number F001.

19. Respondent does not have a permit or interim status under VHWMR § 11.00 (Section 3005 of RCRA or 40 C.F.R. Part 270) to treat, store or dispose of hazardous waste at the Potomac River Facility.

20. With respect to the Potomac River Facility, Respondent is a "generator" as that term is defined in VHWMR § 2.77 (40 C.F.R. § 260.10).

21. On August 18, 1980, Respondent submitted to EPA a Notification for the Morgantown Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a generator and the Morgantown Facility as a treatment, storage and disposal facility of hazardous waste bearing the following EPA hazardous waste numbers: F001, U133, U188, U210 and U226. Each of these wastes is a "hazardous waste" as that term is defined in COMAR §§ 10.51.01.03B(26) and 10.51.02.15, 10.51.02.17F (40 C.F.R. §§ 260.10, 261.31 and 261.33).

22. On November 19, 1980, Respondent submitted to EPA a Part A for the Morgantown Facility. Respondent stated in this Part A that it generated F001, U133, U188, U210, U226 wastes and hazardous waste bearing the EPA hazardous waste number D002. The process code information that Respondent submitted in this Part A

indicated that Respondent stored F001, U133, U188, U210, U226 wastes and hazardous waste bearing the EPA hazardous waste number D002 in tanks; treated F001, U133, U188, U210 and U226 wastes by incineration; and treated hazardous waste in tanks bearing the EPA hazardous waste number D002.

23. On January 14, 1981, EPA acknowledged the Notification referred to in Paragraph 21 above and assigned the Morgantown Facility the EPA identification number MDD 053 936 464.

24. On January 24, 1986, Respondent submitted to EPA a revised Notification for the Morgantown Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a burner of hazardous waste fuel in a utility boiler and a generator of hazardous waste bearing the EPA hazardous waste numbers F001 and F003.

25. On February 28, 1986, Respondent submitted to EPA a revised Notification for the Morgantown Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a burner of hazardous waste fuel and used oil fuel.

26. With respect to the Morgantown Facility, Respondent is a "generator" as that term is defined in COMAR § 10.51.01.03.B (40 C.F.R. § 260.10).

27. With respect to the Morgantown Facility, Respondent is an "owner" or "operator" as those terms are defined in COMAR §§ 10.51.01.03B(49) and (48), respectively (40 C.F.R. § 260.10).

28. The Morgantown Facility is an "existing hazardous waste management facility" as that term is defined in COMAR § 10.51.01.03B(18) (40 C.F.R. § 260.10).

29. On August 18, 1980, Respondent submitted to EPA a Notification for the Chalk Point Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a generator and the Chalk Point Facility as a treatment, storage and disposal facility of hazardous waste bearing the following EPA hazardous waste numbers: F001, U007, U133, U210, U019, U220 and U226. Each of these wastes is a "hazardous waste" as that term is defined in COMAR §§ 10.51.03B, 10.51.02.15 and 10.51.17F (40 C.F.R. §§ 260.10, 261.31 and 261.33).

30. On November 19, 1980, Respondent submitted to EPA a Part A for the Chalk Point Facility. Respondent stated in this Part A that it generated F001, U007, U019, U210, U220, U226, U122, U133 wastes and hazardous waste bearing the EPA hazardous waste number D002. The process code information that Respondent submitted in this Part A indicated that Respondent stored F001, U007, U019,

U210, U220, U226, U133 wastes and hazardous waste bearing the EPA hazardous waste number D002 in tanks; stored U122 waste in containers; treated F001, U007, U019, U210, U220, U226 and U133 wastes by incineration; and treated U122 waste and hazardous waste bearing the EPA hazardous waste number D002 in tanks.

31. On January 14, 1981, EPA acknowledged the Notification referred to in Paragraph 29 above and assigned the Chalk Point Facility the EPA identification number MDD 000 731 570.

32. In a February 24, 1984 letter to the Maryland Department of Environment ("MDE"), Respondent requested the withdrawal of its Part A for the Chalk Point Facility.

33. On January 24, 1986, Respondent submitted to EPA a revised Notification for the Chalk Point Facility pursuant to § 3010(a) of RCRA, 42 U.S.C. § 6930(a). In the Notification, Respondent identified itself as a burner of hazardous waste fuel in a utility boiler and a generator of hazardous waste bearing the hazardous waste EPA numbers F001 and F005.

34. With respect to the Chalk Point Facility, Respondent is a "generator" as that term is defined in COMAR § 10.51.01.03B(24) (40 C.F.R. § 260.10).

35. 40 C.F.R. Part 268 restricts the land disposal of certain wastes (hereafter land disposal restricted waste or LDR waste). Certain provisions of the Land Disposal Restrictions regulations set forth at 40 C.F.R. Part 268 apply to generators of hazardous waste and owners and operators of hazardous waste treatment, storage and disposal facilities. See, 40 C.F.R. § 268.1(b).

36. On November 20, 1989, representatives of the DCRA conducted an inspection at the Benning Road Facility and detected violations of the DCMR and the Federal hazardous waste management regulations.

37. On December 4, 1989, the DCRA issued a Notice of Violation ("NOV") to Respondent for violations detected at the inspection of its Benning Road Facility referenced in Paragraph 36 above.

38. On June 27, 1991, EPA issued Respondent a letter requiring information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

COUNT I

39. The allegations of Paragraphs 1 through 38 of this First Amended Complaint are incorporated herein by reference.

40. 40 C.F.R. § 268.7(a)(1) provides that if a generator determines that it is managing a restricted waste under 40 C.F.R.

Part 268 and the waste does not meet the applicable treatment standards set forth in 40 C.F.R. Part 268, Subpart D or exceeds the applicable prohibition levels set forth in 40 C.F.R. § 268.32 or RCRA Section 3004(d), then with each shipment of waste the generator must notify the treatment or storage facility in writing of the appropriate treatment standards set forth in 40 C.F.R. Part 268, Subpart D and any applicable prohibition levels set forth in 40 C.F.R. § 268.32 or RCRA Section 3004(d).

41. 40 C.F.R. § 268.7(a)(2) provides that if a generator determines that it is managing a restricted waste under 40 C.F.R. Part 268, and determines that the waste can be land disposed without further treatment, then with each shipment of waste it must submit, to the treatment, storage or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in 40 C.F.R. Part 268, Subpart D and the applicable prohibition levels set forth in 40 C.F.R. § 268.32 or RCRA Section 3004(d).

42. Based on their examination of documents, DCRA representatives determined that the Respondent did not furnish written notifications and/or certifications to each treatment, storage or disposal facility receiving the Benning Road Facility's, the Potomac River Facility's, the Morgantown Facility's and the Chalk Point Facility's land disposal restricted waste.

43. In the June 27, 1991 RCRA Section 3007 information request letter referred to in Paragraph 38 above, EPA required that Respondent furnish copies of all written notifications and/or certifications which accompanied each shipment of Respondent's land disposal restricted hazardous waste since November 8, 1986 from the Benning Road Facility, the Potomac River Facility, the Morgantown Facility and the Chalk Point Facility.

44. In response to EPA's June 27, 1991 RCRA Section 3007 request referred to in Paragraphs 38 and 43 above, on July 12 and 17, 1991, Respondent submitted to EPA all paperwork which accompanied its off-site shipments from the Benning Road Facility, the Potomac River Facility, the Morgantown Facility and the Chalk Point Facility of hazardous waste restricted from land disposal. Respondent's submissions did not include the required written notification and/or certification for each and all of the off-site shipments of hazardous wastes referred to in Paragraphs 45, 49, 53, 57 and 61 below.

45. Respondent sent the following shipments of LDR waste from the Benning Road Facility to the Morgantown Facility:

| Manifest # | Waste Code | Waste Type | Shipment Date |
|-------------|------------|------------|---------------|
| MDC 0192856 | F001 | solvent | 8-22-88 |

| | | | |
|-------------|------|---------|---------|
| MDC 0192862 | F001 | solvent | 11-7-88 |
| MDC 0192878 | F001 | solvent | 2-18-89 |
| MDC 0192879 | F001 | solvent | 2-19-89 |
| MDC 0192911 | F001 | solvent | 9-7-89 |
| MDC 0192912 | F001 | solvent | 9-21-89 |
| MDC 0192913 | F001 | solvent | 10-2-89 |

46. At the time each shipment described in Paragraph 45 above was shipped off-site, land disposal restrictions were applicable to F001 solvent waste, pursuant to 40 C.F.R. § 268.30.

47. Respondent violated 40 C.F.R. § 268.7(a)(1) and/or (2) by failing to provide the required written notifications and/or certifications to the treatment, storage or disposal facility that received the off-site shipments of land disposal restricted wastes referred to in Paragraph 45 above.

COUNT II

48. The allegations of Paragraphs 1 through 47 of this First Amended Complaint are incorporated herein by reference.

49. Respondent sent the following shipments of LDR waste from the Benning Road Facility to ENSCO, Incorporated, American Oil Road, El Dorado, Arkansas:

| Manifest # | Waste Code | Waste Type | Shipment Date |
|------------|------------|------------|---------------|
| AR 096980 | F001 | solvent | 3-9-87 |
| AR 096985 | F005 | solvent | 3-9-87 |

50. At the time each shipment described in Paragraph 49 above was shipped off-site, land disposal restrictions were applicable to F001 and F005 solvent wastes, pursuant to 40 C.F.R. § 268.30.

51. Respondent violated 40 C.F.R. § 268.7(a)(1) and/or (2) by failing to provide the required written notifications and/or certifications to the treatment, storage or disposal facility that received the off-site shipments of land disposal restricted wastes referred to in Paragraph 49 above.

COUNT III

52. The allegations of Paragraphs 1 through 51 of this First

Amended Complaint are incorporated herein by reference.

53. Respondent sent the following shipments of LDR waste from the Potomac River Facility to the Benning Road Facility:

| Manifest # | Waste Code | Waste Type | Shipment Date |
|-------------|-------------------------|----------------|---------------|
| PEPC 880003 | F001/F003/ F004/F005 | solid & debris | 12-29-88 |
| PEPC 890002 | F001/F003/ F004/F005 | solid & debris | 1-11-89 |
| PEPC 890004 | F001/F003/ F004/F005 | solid | 2-16-89 |
| PEPC 890005 | F001/F003/ F004/F005 | solvent | 2-16-89 |

54. At the time each shipment described in Paragraph 53 above, was shipped off-site, land disposal restrictions were applicable to F001, F003, F004 and F005 (solvent and solid/debris) wastes, pursuant to 40 C.F.R. § 268.30.

55. Respondent violated 40 C.F.R. § 268.7(a)(1) and/or (2) by failing to provide the required written notifications and/or certifications to the treatment, storage or disposal facility that received the off-site shipments of land disposal restricted wastes referred to in Paragraph 53 above.

COUNT IV

56. The allegations of Paragraphs 1 through 55 of this First Amended Complaint are incorporated herein by reference.

57. Respondent sent the following shipments of LDR waste from the Morgantown Facility to the Benning Road Facility:

| Manifest # | Waste Code | Waste Type | Shipment Date |
|-------------|-------------------------|----------------|---------------|
| MDC 0118224 | F001/F003/ F004/F005 | solvent | 8-19-88 |
| MDC 0118333 | F001/F003/ F004/F005 | solvent | 8-19-88 |
| MDC 0118339 | F001/F003/ F004/F005 | solvent | 10-11-88 |
| MDC 0118257 | F001/F003/ F004/F005 | solid & debris | 11-28-88 |

| | | | |
|-------------|-------------------------|----------------|---------|
| MDC 0118258 | F001/F003/ F004/F005 | solid | 12-7-88 |
| MDC 0118262 | F001/F003/ F004/F005 | solid & debris | 1-25-89 |
| MDC 0118266 | F001/F003/ F004/F005 | solid & debris | 2-14-89 |

58. At the time each shipment described in Paragraph 57 above was shipped off-site, land disposal restrictions were applicable to F001, F003, F004 and F005 (solvent and solid/debris) wastes, pursuant to 40 C.F.R. § 268.30.

59. Respondent violated 40 C.F.R. § 268.7(a)(1) and/or (2) by failing to provide the required written notifications and/or certifications to the treatment, storage or disposal facility that received the off-site shipments of land disposal restricted wastes referred to in Paragraph 57 above.

COUNT V

60. The allegations of Paragraphs 1 through 59 of this First Amended Complaint are incorporated herein by reference.

61. Respondent sent the following shipments of LDR waste from the Chalk Point Facility to the Benning Road Facility:

| Manifest # | Waste Code | Waste Type | Shipment Date |
|-------------|-------------------------|------------|---------------|
| MDC 0118350 | F001/F003/ F004/F005 | solid | 11-10-88 |
| MDC 0118270 | F001/F003/ F004/F005 | solid | 1-12-89 |
| MDC 0118273 | F001/F003/ F004/F005 | solid | 2-22-89 |

62. At the time each shipment described in Paragraph 61 above was shipped off-site, land disposal restrictions were applicable to F001, F003, F004 and F005 solid wastes, pursuant to 40 C.F.R. § 268.30.

63. Respondent violated 40 C.F.R. § 268.7(a)(1) and/or (2) by failing to provide the required written notifications and/or certifications to the treatment, storage or disposal facility that received the off-site shipments of land disposal restricted wastes referred to in Paragraph 61 above.

COUNT VI

64. The allegations of Paragraphs 1 through 63 of this First Amended Complaint are incorporated herein by reference.

65. VHWMR § 5.03.06 (40 C.F.R. § 262.20(b)) provides that the generator shall identify on each manifest all subsequent transporters and the "designated facility."

66. VHWMR § 2.42 (40 C.F.R. § 260.10) provides that a "designated facility" is a hazardous waste treatment, storage or disposal facility which has received a permit from EPA, the Commonwealth of Virginia, or another State with an authorized hazardous waste program or which qualifies for interim status (see VHWMR § 11.03), in the opinion of the applicable aforementioned authority, and has been designated to receive a specific hazardous waste shipment.

67. On March 1, 1990, Respondent submitted to DCRA a letter with copies of manifests for the following off-site shipments of hazardous waste sent to the Benning Road Facility from the Potomac River Facility. This letter was submitted in response to the NOV referred to in Paragraph 37 above.

| Manifest # | Waste Code | Shipment Date |
|-------------|---------------------|---------------|
| PEPC 880003 | F001/F003/F004/F005 | 12-29-88 |
| PEPC 890002 | F001/F003/F004/F005 | 1-11-89 |
| PEPC 890004 | F001/F003/F004/F005 | 2-16-89 |

68. As an attachment to the July 12 and 17, 1991 letters referenced in Paragraph 44 above, Respondent submitted the following manifests for off-site shipments of hazardous waste to the Benning Road Facility from the Potomac River Facility.

| Manifest # | Waste Code | Shipment Date |
|-------------|---------------------|---------------|
| PEPC 880001 | F001/F003/F004/F005 | 9-30-88 |
| PEPC 890005 | F001/F003/F004/F005 | 2-16-89 |

69. The manifest identified the Benning Road Facility as the "designated facility" on each manifest referred to in Paragraphs 67 and 68 above.

70. The Benning Road Facility is not a "designated facility" as defined in VHWMR § 2.42 (40 C.F.R. § 260.10) because it does not have a permit or interim status to treat, store or dispose of hazardous waste as referenced in Paragraphs 8, 9 and 11 above.

71. Respondent violated VHWMR § 5.03.06 (40 C.F.R. § 262.20(b)) by failing to identify a "designated facility," as defined in VHWMR § 2.42 (40 C.F.R. § 260.10), on the manifests referred to in Paragraphs 67 and 68 above.

COUNT VII

72. The allegations of Paragraphs 1 through 71 of this First Amended Complaint are incorporated herein by reference.

73. COMAR § 10.51.03.04A(2) (40 C.F.R. § 262.20(b)) provides that a generator shall designate on the manifest one facility which is permitted to handle the waste described on the manifest.

74. In the March 1, 1990 letter referenced in Paragraph 67 above, Respondent submitted copies of the following manifests for the off-site shipment of the hazardous waste sent to the Benning Road Facility from the Morgantown Facility.

| Manifest # | Waste Code | Shipment Date |
|------------|---------------------|---------------|
| MDC 118266 | F001/F003/F004/F005 | 2-14-89 |

75. In the July 12 and 17, 1991 response to the June 27, 1991 letter referenced in Paragraph 44 above, Respondent submitted the following manifests for off-site shipments of hazardous waste to the Benning Road Facility from the Morgantown Facility.

| Manifest # | Waste Code | Shipment Date |
|-------------|-------------------------------|---------------|
| MDC 0118207 | F001/F003/F004/F005 | 6-8-88 |
| MDC 0118223 | F001/F003/F004/F005 | 6-28-88 |
| MDC 0118325 | F001/F003/F004/F005 | 7-15-88 |
| MDC 0118224 | F001/F003/F004/F005 | 8-19-88 |
| MDC 0118327 | F001/F003/F004/F005 | 8-19-88 |
| MDC 0118328 | F001/F003/F004/F005 | 8-19-88 |
| MDC 0118333 | F001/F003/F004/F005 | 8-19-88 |
| MDC 0118329 | F001/F003/F004/F005 & F005 | 9-19-88 |
| MDC 0118331 | F001/F003/F004/F005 & F005 | 10-5-88 |

| | | |
|-------------|-------------------------------|----------|
| MDC 0118338 | F001/F003/F004/F005 & F005 | 10-11-88 |
| MDC 0118339 | F001/F003/F004/F005 | 10-11-88 |
| MDC 0118340 | F001/F003/F004/F005 | 10-24-88 |
| MDC 0118257 | F001/F003/F004/F005 | 11-28-88 |
| MDC 0118258 | F001/F003/F004/F005 | 12-7-88 |
| MDC 0118262 | F001/F003/F004/F005 | 1-25-89 |

76. The Benning Road Facility does not have a permit or interim status to treat, store or dispose of hazardous waste as referenced in Paragraphs 8, 9 and 11 above.

77. Respondent violated COMAR § 10.51.03.04A(2) (40 C.F.R. § 262.20(b)) by failing to designate on the manifests, referred to in Paragraphs 74 and 75 above, a facility that is permitted to handle the waste described on such manifests.

COUNT VIII

78. The allegations of Paragraphs 1 through 77 of this First Amended Complaint are incorporated herein by reference.

79. In the March 1, 1990 letter referenced in Paragraph 67 above, Respondent submitted copies of the following manifests for the off-site shipment of the hazardous waste sent to the Benning Road Facility from the Chalk Point Facility.

| Manifest # | Waste Code | Shipment Date |
|-------------|---------------------|---------------|
| MDC 0118273 | F001/F003/F004/F005 | 2-22-89 |

80. In the July 12 and 17, 1991 response to the June 27, 1991 letter referenced in Paragraph 44 above, Respondent submitted the following manifests for off-site shipments of hazardous waste to the Benning Road Facility from the Chalk Point Facility.

| Manifest # | Waste Code | Shipment Date |
|-------------|------------|---------------|
| MDC 0046955 | F001 | 1-9-87 |
| MDC 0046957 | F001 | 3-12-87 |
| MDC 0046956 | F001 | 4-14-87 |
| MDC 0046958 | F001 | 5-20-87 |

| | | |
|-------------|---------------------|----------|
| MDC 0118185 | F001/F003/F004/F005 | 4-18-88 |
| MDC 0118192 | F001/F003/F004/F005 | 8-19-88 |
| MDC 0118348 | F001/F003/F004/F005 | 10-24-88 |
| MDC 0118350 | F001/F003/F004/F005 | 11-10-88 |
| MDC 0118270 | F001/F003/F004/F005 | 1-12-89 |

81. The Benning Road Facility does not have a permit or interim status to treat, store or dispose of hazardous waste as referenced in Paragraphs 8, 9 and 11 above.

82. Respondent violated COMAR § 10.51.03.04A(2) (40 C.F.R. § 262.20(b)) by failing to designate on the manifests referred to in Paragraphs 79 and 80 above, a facility that is permitted to handle the waste described on such manifests.

COUNT IX

83. The allegations of Paragraphs 1 through 82 of this First Amended Complaint are incorporated herein by reference.

84. Section 3005 of RCRA, 42 U.S.C. § 6925 and 20 D.C.M.R. §§ 4000.1(b) and 4007.2(d)-(h) (40 C.F.R. § 270.1(b)), with certain exceptions not relevant here, provides that after November 19, 1980, treatment, storage or disposal of hazardous waste by any person who has not applied for or received a RCRA permit is prohibited.

85. Respondent's records revealed that the Respondent began storing shipments of hazardous waste in containers on-site at its Benning Road Facility on December 29, 1988. At least five (5) shipments of F005 or F001/F003/F004/F005 hazardous waste have been stored as detailed below:

| Manifest # | Dates of Storage | # Days stored on-site |
|-------------|---------------------|-----------------------|
| PEPC 880003 | 12-29-88 to 2-10-89 | 43 |
| PEPC 890002 | 1-11-89 to 2-10-89 | 30 |
| PEPC 890004 | 2-16-89 to 3-10-89 | 22 |
| MDC 0118266 | 2-14-89 to 3-10-89 | 24 |
| MDC 0118273 | 2-22-89 to 3-10-89 | 16 |

86. Respondent does not have a permit or interim status to store hazardous waste at its Benning Road Facility, as referenced in

Paragraphs 8, 9 and 11 above.

87. Respondent violated Section 3005 of RCRA, 42 U.S.C. § 6925 and 20 DCMR §§ 4000.1(b) and 4007.2(d)-(h) (40 C.F.R. § 270.1(b)) by storing the five (5) shipments of hazardous waste on-site at its Benning Road Facility without a permit or interim status.

III. COMPLIANCE ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby ordered to:

1. Within ten (10) calendar days following receipt of this First Amended Complaint, furnish written notifications and/or certifications required under 40 C.F.R. § 268.7(a), as applicable, to each treatment, storage or disposal facility that received Respondent's land disposal restricted waste listed above in Paragraphs 45, 49, 53, 57 and 61 of this First Amended Complaint above but did not receive such written notification and/or certification with the original shipment of such wastes. Include with the written notification and/or certification a written explanation informing the facilities that such documentation is being transmitted under a Compliance Order issued to Respondent by EPA.
2. At all times following receipt of this First Amended Complaint, furnish to each treatment, storage and disposal facility which receives a shipment of the Respondent's waste, a written notification and/or certification required for such shipments of land disposal restricted waste under 40 C.F.R. §§ 268.7(a)(1) and (2), as applicable.
3. At all times following receipt of this First Amended Complaint, designate on all manifests a facility that is permitted to handle the waste described on the manifest, in accordance with COMAR § 10.51.03.04A(2), VHWMR § 5.03.06 and 20 DCMR § 4003 (40 C.F.R. § 262.20(b)).
4. Immediately following the receipt of this First Amended Complaint, cease storing hazardous waste at the Benning Road Facility without a permit or interim status, as required by Section 3005 of RCRA, 42 U.S.C. § 6925 and 20 DCMR §§ 4000.1(b) and 4007.2(d)-(h) (40 C.F.R. § 270.1(b)).
5. Within thirty (30) calendar days following receipt of this First Amended Complaint, submit to DCRA for approval and to EPA a complete closure plan for the areas of the Benning Road Facility which were used for the storage of the five (5) shipments of hazardous waste referenced in Paragraph 85 of this First Amended Complaint above, as required by 20 DCMR §§ 4006 and 4006.13 (40 C.F.R. §§ 265.111 and 265.112).

6. Upon receipt of approval of the closure plan, Respondent shall implement such plan in accordance with the requirements and schedule set forth therein. If Respondent's plan is disapproved, within thirty (30) calendar days following Respondent's receipt of the written disapproval, Respondent shall revise its plan to correct the deficiencies and resubmit the plan to DCRA for approval and to EPA.

7. Within sixty (60) calendar days following receipt of this First Amended Complaint, submit to EPA and DCRA proof that financial assurance for closure has been established for the Benning Road Facility as specified in 20 DCMR §§ 4006 and 4006.17 (40 C.F.R. § 265.143).

8. Within sixty (60) calendar days following receipt of this First Amended Complaint, submit to EPA and DCRA proof that liability insurance for the Benning Road Facility has been obtained as specified in 20 DCMR §§ 4006 and 4006.18 (40 C.F.R. §§ 265.147(a), (b) and (e)).

9. Within ninety (90) calendar days following receipt of this First Amended Complaint, Respondent must submit a report to EPA certifying that compliance has been achieved with Paragraphs 1 through 8 of the Compliance Order of this First Amended Complaint.

Any violation of this Compliance Order or further violations of RCRA Subtitle C may subject Respondent to further administrative, civil and/or criminal enforcement, including the imposition of civil penalties and criminal enforcement, including imprisonment, as provided in Section 3008 of RCRA, 42 U.S.C. § 6928.

IV. CIVIL PENALTY ASSESSMENT

Pursuant to Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), EPA proposes the assessment of a civil penalty in the amount of \$320,000 against Respondent for the following violations:

Count I:

Failure to furnish treatment, storage and disposal facilities with written notifications and/or certifications in accordance with 40 C.F.R. § 268.7(a)(1) and/or (2) for seven (7) shipments from the Benning Road Facility to the Morgantown Facility.

Failure to provide the receiving treatment, storage and disposal facilities with written notifications and/or certifications makes it difficult or impossible for the receiving treatment, storage and disposal facilities to identify the waste as land disposal

restricted (LDR). This lack of knowledge of the waste by the treatment, storage and disposal facilities could lead to improper treatment, storage, or disposal of the LDR waste. In this case however, it was likely that the treatment, storage and disposal facilities have been alerted to the fact that they were receiving and handling LDR waste of a specific type since most of the shipments were intra-company shipments for which the Respondent maintained a central tracking system. EPA possesses evidence that indicates that the Respondent violated this LDR requirement for a total of twenty-three (23) separate incidents at its Benning Road Facility, Potomac River Facility, Morgantown Facility and Chalk Point Facility over a period beginning on March 9, 1987 until September 7, 1989.

Total Penalty for Count I: **\$66,500**

Count II:

Failure to furnish treatment, storage and disposal facilities with written notifications and/or certifications in accordance with 40 C.F.R. § 268.7(a)(1) and/or (2) for two (2) shipments from the Benning Road Facility to ENSCO, Incorporated

(See Count I)

Total Penalty for Count II: **\$19,000**

Count III:

Failure to furnish treatment, storage and disposal facilities with written notifications and/or certifications in accordance with 40 C.F.R. § 268.7(a)(1) and/or (2) for four (4) shipments from the Potomac River Facility to the Benning Road Facility.

(See Count I)

Total Penalty for Count III: **\$38,000**

Count IV:

Failure to furnish treatment, storage and disposal facilities with written notifications and/or certifications in accordance with 40 C.F.R. § 268.7(a)(1) and/or (2) for seven (7) shipments from the Morgantown Facility to the Benning Road Facility.

(See Count I)

Total Penalty for Count IV: **\$66,500**

Count V:

Failure to furnish treatment, storage and disposal facilities with written notifications and/or certifications in accordance with 40 C.F.R. § 268.7(a)(1) and/or (2) for three (3) shipments from the Chalk Point Facility to the Benning Road Facility.

(See Count I)

Total Penalty for Count V: **\$28,500**

Count VI:

Failure to identify a designated facility, as defined in VHWMR § 2.42, on the manifests for five (5) shipments sent to the Benning Road Facility from the Potomac River Facility in accordance with VHWMR § 5.03.06 (40 C.F.R. § 262.20(b)).

Failure to designate on each manifest a facility which is permitted to handle the treatment, storage or disposal of the waste on the manifest impedes the regulatory agency(s)' ability to track the waste from "Cradle to Grave". Respondent incorrectly listed the Benning Road Facility as the designated facility on a total of thirty-one (31) manifests for: five (5) shipments of waste sent off-site from its Potomac River Facility, sixteen (16) shipments of waste sent off-site from its Morgantown Facility and ten (10) shipments of waste sent off-site from its Chalk Point Facility. Evidence obtained by the EPA as a result of a State inspection conducted by DCRA and as a response to the 3007 information request indicates that the Respondent implemented an internal manual waste tracking system for the facilities that does not meet the requirements of the regulations, although the system shows that the waste was eventually disposed of off-site at permitted treatment, storage and disposal facilities. Also, the evidence indicates that the noncompliance with this regulation continued from September 30, 1988 to February 16, 1989.

Total Penalty for Count VI: **\$2,500**

Count VII:

Failure to designate on each manifest a facility which is permitted to handle the waste described on the manifests for sixteen (16) shipments sent to the Benning Road Facility from the Morgantown Facility in accordance with COMAR § 10.51.03.04A(2) (40 C.F.R. § 262.20(b)).

(See Count VI)

Total Penalty for Count VII: **\$8,000**

Count VIII:

Failure to designate on each manifest a facility which is permitted to handle the waste described on the manifests for ten (10) shipments sent to the Benning Road Facility from the Chalk Point Facility in accordance with COMAR § 10.51.03.04A(2) (40 C.F.R. § 262.20(b)).

(See Count VI)

Total Penalty for Count VIII: **\$5,000**

Count IX:

Storing hazardous waste without a permit or having interim status in violation of Section 3005 of RCRA, 42 U.S.C. § 6925 and 20 DCMR §§ 4000.1(b) and 4007.1(b) (40 C.F.R. § 270.1(b)).

The intent of the RCRA Program is to track hazardous waste from the point of generation to the final disposal in an effort to prevent the potential for harm to public health and the environment. Respondent presented a harm to the integrity of the RCRA Program by storing five (5) shipments of improperly manifested hazardous waste on-site without a permit or interim status on an intermittent basis at its Benning Road Facility over a 67 day period.

Total Penalty for Count IX: **\$86,000**

The appropriateness of the proposed penalty is based upon facts as set forth in this First Amended Complaint; the nature, circumstances, extent and gravity of the violation; and the amended RCRA Civil Penalty Policy issued by EPA on October 26, 1990. Payment of the penalty shall be made by sending a cashier's check, payable to the United States of America, to:

Regional Hearing Clerk
EPA Region III
P.O. Box 360515
Pittsburgh, Pennsylvania 15251-6515

A copy of the check and transmittal letter shall be transmitted simultaneously to:

Regional Hearing Clerk (3RC00)
EPA Region III
841 Chestnut Street
Philadelphia, Pennsylvania 19107

V. OPPORTUNITY TO REQUEST A HEARING

Respondent has the right to request a hearing to contest any matter of law or material fact set forth in this First Amended Complaint and Compliance Order, the appropriateness of the assessed penalty, or the terms of this Compliance Order. To request a hearing, Respondent must file a written Answer to this First Amended Complaint with the Regional Hearing Clerk (3RC00), EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, within thirty (30) days of receipt of this First Amended Complaint. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in this First Amended Complaint of which the Respondent has any knowledge. The Answer must contain: (1) a statement of the facts which constitute the grounds of defense; (2) a concise statement of the facts which Respondent intends to place at issue in the hearing; and (3) a request for a hearing, if Respondent desires a hearing. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. All material facts not denied in the Answer will be considered as admitted.

If Respondent fails to file a written Answer within thirty (30) days of receipt of this First Amended Complaint, such failure shall constitute an admission of all facts alleged in this First Amended Complaint and a waiver of Respondent's right to a hearing on such factual allegations. Failure to file a written Answer may result in the filing of a Motion for Default Order imposing the penalties herein and ordering compliance with the terms of this Compliance Order without further proceedings.

Any hearing requested by Respondent will be held at a location to be determined at a later date pursuant to 40 C.F.R. § 22.21(d). The hearing will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C. §§ 551-559 and the Consolidated Rules of Practice, 40 C.F.R. Part 22. A copy of these rules is attached.

VI. SETTLEMENT CONFERENCE

Complainant encourages settlement of the proceedings at any time after issuance of this First Amended Complaint if such settlement is consistent with the provisions and objectives of RCRA and HSWA. Whether or not a hearing is requested, Respondent may confer with this Complainant to discuss the allegations of this First Amended Complaint, the amount of the proposed civil

penalty, and the terms of this Compliance Order. A request for settlement conference does not relieve the Respondent of its responsibility to file a timely Answer.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the Parties, and incorporated into a Final Order signed by the Regional Administrator. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to a hearing on any issues of law, fact, discretion or the amount of any penalties agreed to in the Consent Agreement.

The staff attorney assigned to this case is Clay Monroe. If you have any questions or wish to arrange an informal settlement conference, please contact Mr. Monroe at (215) 597-6780 prior to the expiration of the thirty (30) day period following receipt of this First Amended Complaint. Once again, however, such a request for an informal conference does not relieve you of your responsibility to file an Answer within thirty (30) days following your receipt of this Complaint.

Date: _____

Robert L. Allen
Acting Associate Division Director
for RCRA Programs
Hazardous Waste Management Division
U.S. EPA, Region III

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

REGIONAL COUNCIL CLERK
EPA, REGION III, PHILA, PA

IN THE MATTER OF:)

Potomac Electric Power Company)

1900 Pennsylvania Avenue, NW)

Washington, DC 20068)

Respondent)

Docket No. RCRA-III-224

ORDER

And now, this ____ day of January, 1993, upon consideration of the Joint Motion for Amendment and Partial Withdrawal of the Complaint, it is hereby

ORDERED, that the said Motion is GRANTED. Complainant is directed to expeditiously file and serve its Amended Complaint. The Parties have agreed that the Answer previously filed by Respondent shall be deemed refiled as the answer to the Amended Complaint.

Date

Honorable J. F. Greene
Administrative Law Judge

CERTIFICATE OF SERVICE

93 FEB -9 PM 6:33

I hereby certify that the originals of the foregoing Joint Motion and proposed Order were hand-delivered to the Regional Hearing Clerk, United States Environmental Protection Agency, Region III, and that true and correct copies were sent by overnight or first class mail to the following persons:

Honorable J. F. Greene
Administrative Law Judge (A-110)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D. C. 20460

Robert L. Collings, Esquire
Morgan, Lewis & Bockius
2000 One Logan Square
Philadelphia, PA 10103-6993

2/9/93
Date

Clay Monroe
Clay Monroe
Assistant Regional Counsel
U. S. Environmental Protection
Agency, Region III
841 Chestnut Building
Philadelphia, PA 19107